

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
BUREAU OF PUBLIC WORKS

AGREEMENT
FOR
JOB DESCRIPTION
TOWN/CITY, NEW HAMPSHIRE
BUREAU OF PUBLIC WORKS' PROJECT NUMBER XXXXX

CONSULTANT
ADDRESS

**DEPARTMENT OF TRANSPORTATION
BUREAU OF PUBLIC WORKS'
PROJECT NUMBER XXXXX**

**AGREEMENT
FOR CONSULTANT SERVICES**

THIS AGREEMENT made this _____ day of _____ in the year _____ between the State of New Hampshire, hereinafter referred to as the STATE, by the Commissioner of the _____, hereinafter referred to as the Using Agency, and the Commissioner of the Department of Transportation, hereinafter referred to as the COMMISSIONER and XX CONSULTANT – ADDRESS XX (Vendor Number XXXXX), hereinafter referred to as the CONSULTANT.

(THE FOLLOWING PARAGRAPHS NOTED BY AN ASTERISK (*) ARE MULTIPLE CHOICE BY THE WRITER. USE ONLY ONE!)

*WHEREAS, the _____ Regular Session of the General Court of the STATE appropriated funds for the design and construction of the (PROJECT DESCRIPTION AND LOCATION) (LIST CHAPTER LAW AND YEAR).

*WHEREAS, funds have been allocated and are available in the Consolidated Federal Aid Account of the Department of Transportation sufficient to fund this AGREEMENT.

*WHEREAS, funds are available in the operating budget of the (INSERT USING AGENCY NAME).

NOW THEREFORE, in consideration of the undertakings of the parties hereinafter set forth, the COMMISSIONER hereby engages the CONSULTANT, as an independent contractor and not as a STATE agent or employee, to perform the professional services required for the design, construction documents and on-site observation and inspection services for the project, in accordance with Exhibit 'A' and the following terms and conditions for payment of a lump sum fee, not-to-exceed _____ Dollars and _____ Cents (\$_____).

THE PROFESSIONAL STUDY SHALL CONSIST OF THE FOLLOWING:

If any asbestos is encountered during the design or construction of the project, it shall be the responsibility of the owner to provide for the services required for the detection, abatement, replacement or removal of the products, materials or process containing asbestos.

FEE

Payments on the account of the CONSULTANT’S basic services shall be made in proportion to the services performed so that compensation at the completion of each phase shall equal the following percentages of the total basic compensation:

Schematic Design Phase	15%	Bidding and Negotiation Phase	80%
Design Development Phase	35%	Construction Administration Phase	100%
Construction Documents Phase	75%		

For the CONSULTANT’S additional services in making major revisions in drawings, specifications, and other documents when such revisions in the Construction Documents Phase and/or the Construction Phase as required and are inconsistent with written approval or instructions previously given, and are due to causes beyond the control of the CONSULTANT, as approved by the COMMISSIONER, compensation shall be computed as follows:

PRINCIPALS:

PROFESSIONAL STAFF:

Employees not listed above shall be compensated at a rate computed at a multiple of two and one-quarter (2.25) times the employee’s Direct Personnel Expense.

Additional services of professional subconsultants engaged for normal structural, mechanical, and electrical engineering services shall be computed at a multiple of one and one-tenth (1.1) times the amount billed to the Consultant for such services.

Direct personnel expense of employees engaged on the project includes architects, engineers and other technical employees in producing drawings, specifications and other documents pertaining to the project. Such expenses shall include cost of salaries as well as mandatory and customary benefits.

All costs as described in the foregoing paragraph are to be determined by actual records kept during the term of the AGREEMENT which are subject to audit by the STATE and Federal Governments. The final payment and all partial payments made may be adjusted to conform to this final audit. In no case will any adjustments exceed the total agreed upon not-to-exceed amount. All Subconsultant costs may also be subject to audit by the STATE and Federal Governments.

The CONSULTANT’S basic service shall consist of the five phases described below and include: structural, mechanical, and electrical engineering services; site and utility development, as required.

SCHEMATIC DESIGN PHASE: The CONSULTANT shall consult with the Bureau of Public Works to ascertain the requirements of the project and shall confirm such requirements through the Bureau of Public Works of the DEPARTMENT.

The CONSULTANT shall prepare Schematic Design Studies, consisting of drawings and other documents illustrating the scale and relationship of the project components, together with a semi-detailed estimate of construction costs, submitting three (3) sets of these studies to the COMMISSIONER for approval by the Bureau of Public Works.

The CONSULTANT shall present the Schematic Design Documents at a review meeting with the Bureau of Public Works and the Using Agency. The presentation shall contain justification of the concept selected plus a review of options and shall include site work as well as architectural, structural, mechanical, and electrical concept description as applicable for the type of project.

DESIGN DEVELOPMENT PHASE: The CONSULTANT shall prepare, from approved Schematic Design Studies, the Design Development Documents, consisting of drawings and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical, and electrical systems, site development and utilities, materials and methods, as required, together with a more detailed estimate of construction costs, submitting three (3) copies of these studies to the COMMISSIONER for approval by the Bureau of Public Works.

The CONSULTANT and representatives of each of the consultant engineering disciplines required for the project type shall present the Design Development Documents at a review meeting with the Bureau of Public Works and the Using Agency. The presentation shall include justification of selections and impacts of decisions on lifecycle costs. The documents shall describe the project sufficiently to allow for thorough evaluation.

As a minimum, the Design Development package shall include:

1. Definitive Drawings:
 - A. Site plan;
 - B. Floor plans;
 - C. Elevations;
 - D. Section; and
 - E. Systems line drawings
2. Narrative building description including all systems and performance criteria.
3. Outline specifications including all divisions proposed for final inspections.
4. Detailed cost estimate itemized by specification heading.
5. Narrative analysis of any disproportionate budget monies assignments, if any, with justifications.
6. Documented cost/benefit research of options reviewed by each design team discipline.

CONSTRUCTION DOCUMENTS PHASE: The CONSULTANT shall prepare, from approved Design Development Documents, working drawings and specifications, setting forth in detail the requirements for the construction of the entire project, in cooperation with the requirements of the Project Architect/Engineer of the Bureau of Public Works.

Construction documents shall comply with all current applicable Federal, STATE, and local codes, laws, regulations, and requirements applicable to the project.

The CONSULTANT hereby agrees that the construction documents shall be produced in 1/8-inch scale or larger, on Mylar (matte both sides), measuring 24 inches by 36 inches with a 1/2-inch border with a binding border of 1-1/2 inches, unless larger sheets are approved by the COMMISSIONER.

The CONSULTANT shall prepare the technical specifications in the Construction Specifications Institute's format with the cooperation of the Project Architect/Engineer of the Bureau of Public Works. Specifications shall be on "bond paper" suitable for reproduction. The Drawings which have been completed by a computer aided drafting system shall be presented to the Department in .DXF or Autocad .DWG R14 format. Back of the Plan Sheets shall be labeled with its corresponding electronic file name. The Specifications which have been completed by a computerized word processing system shall be presented to the Department in ASCII or MS Word Release 6.0/95 DOC format. The formats and file names shall be clearly identified on the diskettes.

The CONSULTANT shall deliver three (3) sets of prints of the working drawings and specifications to the Bureau of Public Works for final review prior to submitting the original construction documents.

BIDDING AND NEGOTIATION PHASE: The CONSULTANT shall assist the Bureau of Public Works in preparing the necessary addenda during the bidding period and shall assist in negotiations, as required, prior to award of the construction contract.

CONSTRUCTION ADMINISTRATION PHASE: Generally, the CONSULTANT shall function as an advisor to the Bureau of Public Works' Project Architect/Engineer. The CONSULTANT shall, at all times, have access to the work and shall make weekly visits to the site to familiarize itself generally with the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the Contract Documents, and shall require its engineering consultants to do likewise. The CONSULTANT shall endeavor to guard the STATE against defects and deficiencies in the work of the Contractor. The COMMISSIONER reserves the right to require the CONSULTANT to make visits to the site more frequently or less frequently than weekly, as ordered by the Architect/Engineer of the Bureau of Public Works.

After each visit, the CONSULTANT, in consultation with its subconsultants, shall promptly submit a written report of its findings, and/or those of its subconsultants, to the Bureau of Public Works, listing all its observations, decisions, and interpretations of the Contract Documents and work progress, made during on-site visits. Based upon such observations at the site and on the Contractor's Requisition for Payment, the CONSULTANT shall determine the appropriateness of line-item costs submitted and shall so advise the Bureau of Public Works prior to the processing of the Partial Payment Estimate.

The CONSULTANT shall conduct timely review and approval of shop drawings, samples, and other submissions of the Contractor for conformance to the design concept of the project and for compliance with the information given in the Contract Documents. These shall be forwarded to the Project Engineer for final approval.

The CONSULTANT shall record and distribute minutes of all project meetings and shall advise the Bureau's Project Architect/Engineer relative to construction disputes.

The CONSULTANT shall also issue Architect's Supplemental Instructions, as required, to clarify and interpret the Contract Documents and submit finish color selections for owner's approval.

The CONSULTANT shall compile Requests for Proposal for Alteration Orders and review Contractor's Change Estimates.

The CONSULTANT shall assist the Bureau of Public Works in determining the dates of Substantial and Final Completion, and shall receive and review written guarantees and related documents assembled by the Contractor.

The CONSULTANT shall assist in the preparation of the Substantial Completion Certificates, compiling punch lists of work in need of correction.

DATE OF COMPLETION: The CONSULTANT hereby agrees to process the services required by this AGREEMENT expeditiously to the completion of the Construction Documents Phase of the assigned project and to deliver these documents to the Commissioner on or before _____.

THE COMMISSIONER'S RESPONSIBILITIES: The COMMISSIONER will provide the CONSULTANT with all pertinent information, to a reasonable extent, regarding his and the Using Agency's requirements for the project.

The COMMISSIONER hereby designates the Bureau of Public Works as his representative, authorized to act in his behalf with respect to the project. The Architect/Engineer of the Bureau of Public Works will examine the documents submitted by the CONSULTANT and will render decisions pertaining thereto promptly in order to avoid delay in the progress of the CONSULTANT'S work.

The COMMISSIONER will administer all details in connection with obtaining bids for negotiating proposals, awarding and preparing contracts, preparing partial estimates and other contract administrative work required for the project.

The COMMISSIONER will provide for field inspection of the work.

The COMMISSIONER may extend the completion date stipulated in this AGREEMENT when satisfactory evidence is presented by the CONSULTANT that such extension is warranted.

TERMINATION OF AGREEMENT: The COMMISSIONER may at any time, after the execution of the AGREEMENT, abandon or suspend for an indefinite time the prosecution of the project or any part thereof. Upon notification in writing of such abandonment or suspension, this AGREEMENT shall be terminated or modified as the case may require. In such event, the CONSULTANT shall, in addition to any installment or fee payable prior to such abandonment or suspension, be entitled to fair compensation for any uncompensated work in progress, and all documents finished or unfinished shall become the property of the STATE as official records and documents of public concern and information.

The CONSULTANT, for just cause, may terminate this AGREEMENT by notifying the COMMISSIONER in writing thirty (30) days prior to such termination.

EXTENT OF AGREEMENT: This AGREEMENT, including Exhibit 'A', is the entire AGREEMENT and understanding of the parties and supersedes all prior understandings. This AGREEMENT shall be construed according to the laws of the STATE. The scope of work in this AGREEMENT shall not be modified in any way without prior approval of the Governor and Council.

CONTINGENT NATURE OF AGREEMENT: Notwithstanding anything in this AGREEMENT to the contrary, all obligations of the STATE, including, without limitation, the continuance of payments, are contingent upon the availability and continued appropriation of funds and, in no event, shall the STATE be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the STATE shall have the right to terminate this AGREEMENT.

CLAIMS AND INDEMNIFICATION

(a) NON-PROFESSIONAL LIABILITY INDEMNIFICATION: The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its subconsultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury and/or (ii) misconduct or wrongdoing of the CONSULTANT or its subconsultants in the performance of this AGREEMENT.

(b) PROFESSIONAL LIABILITY INDEMNIFICATION: The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its subconsultants in the performance of professional services covered by this AGREEMENT.

(c) These covenants shall survive the termination of the AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the STATE, which immunity is hereby reserved by the STATE.

INSURANCE

It is agreed that, in accordance with Chapter 281 of the Revised Statutes Annotated, as amended, the CONSULTANT shall purchase and keep in effect for the life of the project workers' compensation insurance, and require its consultants to do likewise; the CONSULTANT shall furnish the COMMISSIONER with certificates showing that this insurance has been purchased.

Further agreed that, in accordance with Chapter 228 of the Revised Statutes Annotated, as amended, the CONSULTANT shall maintain during the life of the project, professional liability insurance (errors or omissions) providing protection to the STATE for the CONSULTANT'S acts and omissions committed during the life of the project. Such professional liability insurance shall be in the minimum amount of \$xxxxxxxx per claim; with an aggregate amount of at least twice the amount per claim. No retention (deductible) shall be more than \$xxxxxxx. The CONSULTANT shall furnish the COMMISSIONER with certificates showing that this insurance has been purchased.

Further agreed, the CONSULTANT shall purchase and keep in effect for the life of the AGREEMENT commercial and personal automobile liability insurance covering any motor vehicles, including owned, hired, borrowed, and non-owned vehicles. Such insurance shall be in the minimum amount of \$300,000 combined single-limit for bodily injury and property damages; the CONSULTANT shall furnish the COMMISSIONER with certificates showing that this insurance has been purchases.

Should any of the above-described policies be canceled before the expiration date thereof, the issuing company shall mail thirty (30) days written notice to the certificate holder, or ten (10) days in cases of non-payment of workers' compensation premium. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than this time frame, after written notice thereof has been received by the STATE.

The certificates shall evidence the required coverage, retention (deductible) and cancellation clause. The CONSULTANT shall have a continuing duty to provide new certificates of insurance as the policies are amended or renewed.

OWNERSHIP OF DOCUMENTS: All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports or other documents collected, prepared or undertaken either manually or electronically by the CONSULTANT under the provisions of this AGREEMENT, immediately shall become the property of the DEPARTMENT and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the DEPARTMENT, upon demand at any time, or submit to its inspection any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report or document that shall have been collected, prepared or undertaken by the CONSULTANT pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the DEPARTMENT. The CONSULTANT shall have the right, with the written approval of the DEPARTMENT, to use any of the data prepared by it and hitherto delivered to the DEPARTMENT at any later stage of the project contemplated by this AGREEMENT.

CONSULTANT NAME ALL CAPS.:

DATED:_____

BY:_____

(PLEASE PRINT)

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION:

DATED:_____

BY:_____

Carol A. Murray, P.E.
Commissioner

USING AGENCY:

DATED:_____

BY:_____

Commissioner

ATTORNEY GENERAL:

This is to certify that the above Agreement has been reviewed by this office and is approved as to form and execution.

DATED:_____

BY:_____

SECRETARY OF STATE:

This is to certify that the Governor and Council approved this Agreement/amendment on

_____.

DATED:_____

BY:_____

Secretary of State

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